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09/871,349	05/31/2001	Paul J. Bryan	4822-001	9565

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EXAMINER

MENDIRATTA, VISHU K

ART UNIT PAPER NUMBER

3711

DATE MAILED: 08/14/2003

8

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 8

Application Number: 09/871,349  
Filing Date: May 31, 2001  
Appellant(s): BRYAN, PAUL J.

**MAILED**

**AUG 14 2003**

**GROUP 3700**

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Paul J. Bryan  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 05/27/03.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is deficient because the disclosure is silent with respect to "subgroups representing a specific band". There is no disclosure of a clear structure of band member cards including the example of a group as "The Beatles", and subgroups of four cards having "Paul, John, Lennon etc.".

The disclosure is silent with respect to the structure of "band member cards".

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 11 and 14 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

4,998,736

Elrod

03-1991

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Elrod.

Elrod teaches a game board comprising a plurality of paths (spaces 1-118) leading to a performing stage (see FINAL STAGE on Fig.1), a series of tokens for players (128), a starting point (space 1, Fig.1), at least two decks of cards (124,126), a first deck of cards (124) as consequence cards having a key to path (col.9, line 55 "lose a turn"), and a second deck of cards (126) including a plurality of groups of cards (col.7, line 40 thru col.10, line 16).

Applicant may note that limitation "Band-member card group representing a band and members of band" is being interpreted as a rule for playing and does not add any weight to the apparatus as claimed.

Art Unit: 3711

Intended use of an apparatus does not add any limitation to the apparatus in the claim.

Accordingly the recitation of the object of the game carries little weight towards the claimed game.

**(11) *Response to Argument***

Applicant's argument that Examiner has misinterpreted claim 11 with respect of "band member cards and their subgroups" is not persuasive.

The examiner takes the position that the disclosure is silent with regards to the structure of the "band member cards" as indicated in applicant's arguments.

Applicant's recitation of limitations as "players receiving band member cards" (5:11), "representing a band" (2:2), "naming band member cards as 'on tour' cards" (6:12), "discarding or trading cards" (12:11) only indicate the intended use of the cards and/or rules for playing the game and do not further add any limitation to the structure of the apparatus in the claim.

The disclosure is clearly silent about applicant's example (in applicant's argument) of a group as "The Beatles", and subgroups of four cards having "Paul, John, Lennon etc.".

Further the examiner takes the position that Elrod clearly teaches cards that are similar to "band member cards" as demonstrated (8:7:30). Elrod also teaches band member cards collecting/adding members (7:41-42).

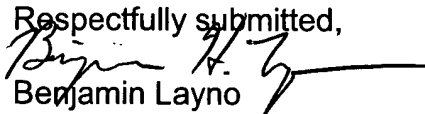
Further the examiner takes the position that while Elrod does not expressly indicate collecting/exchanging cards, the game cards disclosed in Elrod are capable of being collected and exchanged which is a commonly known method step of playing in the art area of board games.

One such example of a board game is MONOPOLY that utilizes cards during play.

Although the game does not specifically teach exchanging cards, it is an accepted practice among players of the game.

For the above reasons, it is believed that the rejections should be sustained.

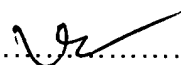
Respectfully submitted,

  
Benjamin Layno  
Primary Examiner

August 8, 2003

Conferees

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